

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK

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In the Matter

of

Case No.  
00-B-41065

RANDALL'S ISLAND FAMILY GOLF CENTERS, INC.,  
et al.,

Debtors.

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May 9, 2000

United States Custom House  
One Bowling Green  
New York, New York 10004

Hearing

B E F O R E:

HON. STUART M. BERNSTEIN,

Bankruptcy Judge.

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1           RANDALL'S ISLAND FAMILY GOLF CENTERS, INC.

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3       A P P E A R A N C E S :

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5           FRIED FRANK HARRIS SHRIVER & JACOBSON, ESQS.

6                   Attorneys for Debtor

7                   One New York Plaza

8                   New York, New York 10004

9

10           BY:       LAWRENCE A. FIRST, ESQ., of Counsel

11                   -and-

12                   GARY KAPLAN, ESQ., of Counsel

13

14           MORGAN LEWIS & BOCKIUS LLP

15                   Attorneys for Chase Manhattan Bank

16                   101 Park Avenue

17                   New York, New York 10178

18

19           BY:       RICHARD S. TODER, ESQ., of Counsel

20                   -and-

21                   PATRICIA F. BRENNAN, ESQ., of Counsel

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23

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25

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1 RANDALL'S ISLAND FAMILY GOLF CENTERS, INC.

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3 A P P E A R A N C E S (Continued) :

4

5 WONG & FLEMING, ESQS.

6 Attorneys for Chinatrust Commercial

7 Bank

8 2035 Lincoln Highway, Suite 1050

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10

11 BY: ANDREW J. BAYNE, ESQ., of Counsel

12 -and-

13 LINDA WONG, ESQ., of Counsel

14

15 CAROLYN S. SCHWARTZ, ESQ.

16 Office of the United States Trustee

17 33 Whitehall Street

18 New York, New York 10004

19

20 BY: BRIAN MASUMOTO, ESQ.

21

22

23

24

25

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1           RANDALL'S ISLAND FAMILY GOLF CENTERS, INC.

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3                   P R O C E E D I N G S

4

5

6                   THE COURT:  Randall's Island.  We  
7 will take a brief recess so you can give your  
8 appearances to the Court reporter.

9                   (Whereupon, at this point in the  
10                   proceedings there was a recess, after which  
11                   the hearing continued as follows:)

12                   THE COURT:  Mr. Sacks, we are having  
13 trouble with the computer disks we are sending  
14 down here.

15                   MR. SACKS:  I have heard that there's  
16 trouble with the joint Admon disk; we sent it over  
17 twice.  It's crashed twice.  We are going to have  
18 our information systems people call over to the  
19 Admon people here and try to figure it out.

20                   THE COURT:  Sounds like the perfect  
21 solution.

22                   MR. SACKS:  Your Honor, I think the  
23 way it makes sense to proceed with the Court's  
24 permission is to hand up the current version, with  
25 the disk, of the proposed order.

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1           RANDALL'S ISLAND FAMILY GOLF CENTERS, INC.

2                   THE COURT:   Is that one I asked for  
3   this morning?

4                   MR. SACKS:   Actually, the reason I  
5   think I should hand it up is it's slightly  
6   different.   I want to go through with the Court  
7   the changes that have been discussed and actually  
8   one of the changes that was made since we sent  
9   things over about 9:30 or so this morning.  
10   (handing)

11                  THE COURT:   Okay.   Where does this  
12   disk come from?

13                  MR. SACKS:   It comes from the same  
14   place.   It's apparently the only disk that they  
15   were apparently having problem with is the joint  
16   Admon.

17                  THE COURT:   Nothing's going to get  
18   entered.

19                  MR. SACKS:   Right.   I understand that  
20   in terms of what's happened this morning, one of  
21   changes it reflected in what I just handed the  
22   Court and the others are either changes that are  
23   reflected or are things that have been agreed to.

24                         In paragraph 28 of the proposed  
25   Order, in the copy I have just handed the Court,

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1           RANDALL'S ISLAND FAMILY GOLF CENTERS, INC.  
2       we have deleted the note, we have changed the  
3       notice provision so that only the notice attached  
4       is sent and not a copy of the interim Order. It's  
5       my understanding from the chamber's conference on  
6       Thursday that that's what Your Honor had  
7       contemplated.

8                       THE COURT: Just thinking it would  
9       save money.

10                      MR. SACKS: So we have made that  
11       change, and that's reflected in what I handed the  
12       Court is not reflected in what I sent out to some  
13       of the parties I have deleted the words "copies of  
14       this Order" in the third line of what was faxed,  
15       and I have indicated that the notice that was  
16       attached is Exhibit A.

17                      THE COURT: Okay.

18                      MR. SACKS: The second thing I want  
19       to bring to the Court's attention is just a  
20       clarification of the term sheet.

21                      On the top of page five of the term  
22       sheet, the term sheet is attached to the package I  
23       handed the Court. There is a definition of  
24       purpose, and in the definition of purpose there is  
25       a parenthetical that starts with "including up to

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1           RANDALL'S ISLAND FAMILY GOLF CENTERS, INC.

2       X" and ends with "as hereinafter" defined.

3                       And as a clarification, it's Chase  
4       and the Debtors have agreed that the words "as may  
5       be agreed to," that the stuff in the parenthetical  
6       "has already been agreed to." And the "as may be  
7       agreed to" modifies for such other purposes that  
8       goes before the parenthetical.

9                       We are not going to change the  
10       document, Judge, since there's going to be a  
11       definitive agreement before the final Order but  
12       just in terms of what the parties have agreed to,  
13       the material in the parenthetical has already been  
14       agreed to. Is that correct, Richard?

15                      MR. TODER: Yes, Your Honor.

16                      MR. SACKS: In the affirmative  
17       covenants of covenant B, which was the furnished  
18       consolidated and consolidating monthly cash flow  
19       reports in copies that we circulated.

20                      MR. TODER: Page 10.

21                      THE COURT: Thank you.

22                      MR. SACKS: There were brackets  
23       around the words "including updates, construction  
24       tables and progress," and those brackets have been  
25       deleted.

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1           RANDALL'S ISLAND FAMILY GOLF CENTERS, INC.

2                   THE COURT:   Okay.

3                   MR. SACKS:   In the notice that is  
4   attached there are certain changes that Mr. Toder  
5   has requested that I've agreed to make that are  
6   not reflected in the document.   I think the only  
7   copy of the notice you have, Judge, is at the very  
8   end of the disk packet.

9                   THE COURT:   I have it.   It's at the  
10   top of the packet.

11                  MR. SACKS:   On the second page, Your  
12   Honor, in the third line instead of "as principal  
13   and as agent, we are going to notice that we  
14   proposed to send," will say "individually and as  
15   agent."   In paragraph --

16                  THE COURT:   Okay.

17                  MR. SACKS:   Little iv, where at the  
18   bottom of the page the words "first priority" on  
19   the second line and the word "senior" on the ninth  
20   line are deleted.

21                  THE COURT:   Okay.

22                  MR. SACKS:   Lastly, on the last page  
23   the zip code for Morgan, Lewis has been corrected.  
24   It should be 10178-0060.

25                  The other thing that happened this

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1           RANDALL'S ISLAND FAMILY GOLF CENTERS, INC.  
2 morning which isn't reflected in the documents is  
3 that at 9 o'clock this morning our office received  
4 faxed from Chinatrust counsel a 2004 subpoena.  
5 Chang, Dominick Chang to appear here today at 11  
6 o'clock. I have told counsel --

7                       THE COURT: 2004 subpoena?

8                       MR. SACKS: I have told counsel that  
9 I didn't think it was the proper form to compel  
10 Mr. Chang to appear. That I didn't think it was  
11 timely and that Mr. Chang wouldn't be here. That  
12 I would make him available at the final hearing  
13 without the need for any process.

14                      They have also served on us later  
15 this morning when we got to Court a request for a  
16 2004 Examination of certain of the Debtors  
17 relating to the Chinatrust properties. I have  
18 told counsel for Chinatrust that we would work out  
19 a schedule for that after Court today.

20                      THE COURT: Okay.

21                      MR. SACKS: Other than that, Your  
22 Honor, we have circulated, we have come to an  
23 agreement with Chase as to the Order and as to the  
24 term sheet.

25                      As the proposed Order in the term

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1           RANDALL'S ISLAND FAMILY GOLF CENTERS, INC.  
2   sheet, we have circulated as soon as we came to  
3   agreement with the U.S. Trustee's Office and to  
4   Chinatrust, and got it over to Your Honor as early  
5   as we could this morning. And with that I think  
6   that the only issue is to the extent that people  
7   have objections or the Court has any questions.

8                   THE COURT: Well, one thing I'm going  
9   to require is there are a lot of factual things in  
10  here and you can make an offer of proof, but I  
11  don't have any evidence for a lot of this stuff.  
12  Basically, what I note it says is what I read in  
13  the documents and what Mr. Chang testified to. I  
14  don't have any problems making a determination  
15  that Debtor needs the money, but there are other  
16  findings of fact as to which I would have to at  
17  least make an offer of proof.

18                  MR. SACKS: You want the offer of  
19  proof specific or general, Judge? I can make an  
20  offer of proof that if called to testify  
21  representatives of Debtors and Chase would testify  
22  in support of each of factual findings.

23                  THE COURT: Is there anybody who has  
24  an objection to that formal offer of proof?

25                  MS. WONG: Yes, Your Honor, because

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1           RANDALL'S ISLAND FAMILY GOLF CENTERS, INC.  
2   we did serve -- I am Linda Wong representing  
3   Chinatrust and China Commercial.

4                   We do object because we wanted Mr.  
5   Chang here this morning and we did send the  
6   subpoena out. We wanted to give them as much  
7   notice as possible.

8                   We didn't get any of the documents  
9   from them until around 9 o'clock last night.  
10   However, there were certain critical issues here  
11   which we feel we need to examine Mr. Chang, and I  
12   do have an objection to that.

13                   This is an Order to Show Cause  
14   hearing. We may have to show that there's some  
15   kind of irreparable harm so the emergency relief  
16   that's necessary at this juncture.

17                   We were only served with the original  
18   motion papers last Thursday, and so we don't think  
19   that they are going to be able to meet that burden  
20   without Mr. Chang here. We know that he's been  
21   here at every proceeding, but at the same time if  
22   the Court wanted to hear evidence we would want  
23   the opportunity cross-examine the witness.

24                   THE COURT: Is Mr. Chang available?

25                   MR. SACKS: He is in New York, Your

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1           RANDALL'S ISLAND FAMILY GOLF CENTERS, INC.

2       Honor. We could get him here, if you need him.

3                   THE COURT: You are asking me to make  
4       factual findings; you have an objection, she  
5       doesn't want to accept the offer of proof and she  
6       doesn't have to, I guess.

7                   MR. TODER: Just one thought, Your  
8       Honor, when one parses through the findings, I  
9       think you would find that with perhaps one or two  
10      exceptions that a lot of it are assertions and not  
11      true findings.

12                  THE COURT: Yes, I know, but in terms  
13      of true need.

14                  MR. TODER: That's where I thought  
15      Your Honor would be going, and what I would  
16      suggest is that we did have Mr. Chang here and  
17      there is a transcript but in point of fact, the  
18      Wong firm was present at that time and I think  
19      that on the basis of that testimony, Your Honor is  
20      able to make virtually all of the findings which  
21      are requested, recognizing, of course, it is an  
22      interim hearing. So I don't know that it's  
23      necessary and indeed it is virtually a lifetime  
24      between last Thursday and Tuesday. The way the  
25      hearings go, as Your Honor well knows, this is

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1           RANDALL'S ISLAND FAMILY GOLF CENTERS, INC.  
2       actually longer than sometimes one gets, so unless  
3       Your Honor has specific parts of the --

4                       THE COURT:   Do you have that chart  
5       that was introduced and about which there was some  
6       testimony?

7                       MS. WONG:   This chart?

8                       THE COURT:   I don't know which one it  
9       was.   It was on a small piece of paper.   The  
10      projections.

11                      MR. SACKS:   I think I would also note  
12      while we are waiting for that, that the Affidavit  
13      that was submitted in connection with the only  
14      application which counsel for Chinatrust has had  
15      since last Wednesday night --

16                      THE COURT:   Just show it to them to  
17      make sure it's the same document.   (handling)

18                      MR. SACKS:   And Chinatrust has also  
19      had the proposed outline of the proposed term  
20      sheet since last Thursday, and the first we heard  
21      of any objection or any requirement that Mr. Chang  
22      be here was at 9 o'clock this morning.

23                      MS. WONG:   Your Honor, also I would  
24      like to be heard on that issue.   The terms have  
25      substantially changed since last Friday and when

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1           RANDALL'S ISLAND FAMILY GOLF CENTERS, INC.  
2   hearing is held on this matter several weeks from  
3   now, the Court could conclude that it would be  
4   appropriate to have some type of financing in  
5   place.  However, this is not the financing that  
6   should be an Order.  I mean an Order should not be  
7   issued today because they can't show that there  
8   was a destruction of their business in any way.  
9   They can't show that, for example, I don't want to  
10   tell the Debtors what kind of proof they have to  
11   put on in order to show destruction of their  
12   business, but none of that was testified to before  
13   and if they are going to raise that now just on  
14   paper, I want to be able to examine Mr. Chang  
15   about that.

16                   THE COURT:  Yes.

17                   MR. SACKS:  The risks on that very  
18   issue, Mr. Chang has been fully examined by  
19   Chinatrust.  Mr. Chang testified, and the only  
20   reason why we didn't need the emergent relief as  
21   of last Thursday, was Chase's agreement to carry  
22   us through the weekend.  But the vagaries of the  
23   business was as Mr. Chang testified to, the impact  
24   on vendors, the impact on employees and the very  
25   cash flows there which show that we are very close

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1        RANDALL'S ISLAND FAMILY GOLF CENTERS, INC.  
2        to the line for some of the weeks between now and  
3        May 30th.

4                    THE COURT:    You see I'm looking at  
5        the chart which was testified about, and I see,  
6        for instance, for the week ending May 19th, the  
7        negative cash flow is almost \$1.4 million and they  
8        will have \$17,000 from the bank, if everything  
9        breaks the way it's supposed to break.    So it  
10       looks to me like they may need \$1.4 million by  
11       then.

12                   I see that for the week ending June,  
13        which may be beyond the final hearing, the week  
14        ending June 2nd, their cash flow is \$2 million and  
15        indeed their cash balance is almost negative \$1  
16        million so clearly they need some financing.

17                   This chart was testified to.    You had  
18        an opportunity to cross-examine at the last  
19        hearing.    There's evidence that they need  
20        financing and there's also evidence that no one  
21        refuted Mr. Chang's view of the appearance or the  
22        availability of financing induces trade vendors to  
23        basically give unsecured credit in the ordinary  
24        course of business.    And they don't -- I don't see  
25        what beyond that what evidence is necessary in

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1        RANDALL'S ISLAND FAMILY GOLF CENTERS, INC.  
2        order to make a determination that the Debtor  
3        needs some financing or may need some financing  
4        over the next two weeks.

5                    MS. WONG: It seems to me that Mr.  
6        Chang testified that they might not even need the  
7        money from this financing and, in fact, I'm not  
8        even sure they used the money over the weekend.

9                    THE COURT: Well, that was just for  
10       the two days or three days, but now we are talking  
11       about going out for about 14 days and I see again  
12       the week ending May 19th, which is during this  
13       period, they are going to have a negative cash  
14       flow of \$1.4 million.

15                   MS. WONG: But these were projected  
16       revenue deficits that they weren't even clear  
17       about. We are going into the summer session now,  
18       this is the season.

19                   THE COURT: Well, he testified and  
20       you had the opportunity to cross-examine. Do you  
21       have any evidence to produce which indicates that  
22       those are not correct projections?

23                   MS. WONG: I don't think that, first  
24       of all, based on what he testified to last week,  
25       that he has made the requisite showing for the

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1           RANDALL'S ISLAND FAMILY GOLF CENTERS, INC.

2       fact that there was going to be a destruction of  
3       the business. I think that --

4                   THE COURT: I don't think that's the  
5       test. Destruction of business, it's immediate or  
6       irreparable harm. I don't think they have to  
7       prove that they are going to go out of business,  
8       if they don't get the financing.

9                   MS. WONG: Well, there's the case of  
10      Rossolino Beverages Distributors Incorporated  
11      versus Coca-Cola Bottling Company New York which  
12      talks about how you have to almost show complete  
13      and total loss as a destruction.

14                  THE COURT: What Court decided that?

15                  MS. WONG: That's the Second Circuit  
16      1984. There are other cases indicating that  
17      destruction could possibly relate to the  
18      contractor possibly deciding that they will not do  
19      business -- with a major contractor deciding they  
20      will not do business with the Debtor any longer.  
21      It has to be a substantial contractor. It can't  
22      be someone that has minor contracts with the  
23      Debtor. It cannot be someone whose relationship  
24      is really going to be impaired.

25                  THE COURT: Well, how about not being

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1           RANDALL'S ISLAND FAMILY GOLF CENTERS, INC.

2       able to meet the payroll?

3                   MS. WONG: That is a legitimate  
4       reason. However, it appears that from the  
5       testimony they also indicated they conceded that  
6       they probably didn't even need the money.

7                   THE COURT: But that was just for  
8       this payroll.

9                   MS. WONG: Right, but I think at some  
10      point when they get to that point where they  
11      absolutely need an Order to Show Cause in order to  
12      enter into this type financing agreement, then  
13      that's when they should come to the Court. I  
14      think it's premature now to ask the Court to enter  
15      emergency relief especially since upon our review  
16      of the terms of this financing agreement it is so  
17      unfair and it is so one-sided.

18                  THE COURT: Let's put aside the  
19      question of need and tell me about the items of  
20      the financing agreement that you object to.

21                  MR. SACKS: Your Honor, if I just may  
22      note that the items with respect to the Chinatrust  
23      of the financing have not changed since Thursday  
24      afternoon.

25                  THE COURT: She may have felt that

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1           RANDALL'S ISLAND FAMILY GOLF CENTERS, INC.  
2       was unfair also, so let me hear what you think is  
3       unfair.

4                       MS. WONG:  In items of the financing  
5       agreement and the terms?

6                       THE COURT:  Right.

7                       MS. WONG:  This is a situation in  
8       which Chase has unrecorded mortgages.  They are  
9       unsecured with regard to this \$130 million debt,  
10      and this is their attempt to protect their  
11      interests and perhaps even perfect security  
12      interests which they should have perfected a long  
13      time ago on pre-petition.

14                      They are seeking to use this DIP  
15      financing to put themselves in a better place than  
16      where they were prior to the petition.  It allows  
17      them for a certain setoff monies, in cash  
18      collateral.

19                      We have reason to believe that there  
20      is a certain amount of money which is being  
21      deposited into a general operating account in  
22      Melville, New York.  Everything that, all of the  
23      revenue that comes into the properties are sent  
24      directly to Melville into an operating account and  
25      that's our cash collateral.

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1           RANDALL'S ISLAND FAMILY GOLF CENTERS, INC.

2                       We have an absolute assignment of  
3   rents, they have been perfected. We have reason  
4   to believe that this money is being intermingled  
5   and used by the Debtors.

6                       And Chase Manhattan Bank by virtue of  
7   this DIP financing seeks to have a super priority  
8   lien, and seeks to prime our cash collateral on  
9   that and we have a serious concern over that.

10                      There are provisions in this  
11   agreement which provide that they can enter a  
12   default without Court proceedings. It circumvents  
13   and perverts the inter-bankruptcy process.

14                      Essentially there are no adjudication  
15   of rights with regard to setoffs again. There is  
16   a default procedure whereby attorneys' fees  
17   pre-petition are going to be paid without any kind  
18   of adjudication on the reasonableness of those  
19   fees and for which there has been no valid lien.  
20   There is cross-collateralization throughout this  
21   agreement.

22                      THE COURT: Where is the  
23   cross-collateralization? I didn't see that.

24                      MS. WONG: I can find it for you,  
25   Your Honor. It appears at a number of places in

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1           RANDALL'S ISLAND FAMILY GOLF CENTERS, INC.

2   the paragraph, in the document that we received  
3   last night, paragraph 4,

4                   THE COURT:   Is this the terms or the  
5   Order?

6                   MS. WONG:   This is, well, I think I'm  
7   looking at the terms right now -- I'm looking at  
8   the Order, I'm sorry.  In paragraph 4 of the Order  
9   it seeks an adjudication of setoff rights they are  
10   attempting to cross-collateralize their  
11   pre-petition financing with the DIP financing.

12                  THE COURT:   Let me just read  
13   paragraph 4.  Putting aside the set off issue how  
14   does this paragraph, cross-collateralization, it's  
15   a replacement lien to the extent that their  
16   collateral is diminished.

17                  MS. WONG:   I think they are trying to  
18   adjudicate the setoff rights.

19                  THE COURT:   That's something else.  
20   But you said it was cross-collateralization, tell  
21   me how it's cross-collateralization.  It says to  
22   the extent that your pre-petition lien is  
23   diminished you get a replacement lien and  
24   post-petition collateral.  What's wrong with that?

25                  MS. WONG:   Well, I would limit it

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1       RANDALL'S ISLAND FAMILY GOLF CENTERS, INC.  
2       only to the setoff. I think it allows for a  
3       setoff based upon what is owed pre-petition, based  
4       upon the DIP financing.

5               THE COURT: I guess --

6               MR. TODER: Your Honor.

7               THE COURT: To the extent it's set  
8       off it's a secured claim, just increases their  
9       secured claim. I mean the objection is valid that  
10      to some extent you are asking me to determine  
11      setoff rights and I can't determine that today. I  
12      would say to the extent you have setoff rights --

13              MR. SACKS: We are not asking that,  
14      Judge.

15              MR. TODER: We have got a complete  
16      reservation of rights built in here for all  
17      parties including, obviously, Chinatrust.

18              THE COURT: To the extent they had  
19      liens, or maybe putting it to the extent they  
20      didn't have liens, anybody is free to prove that  
21      and, you know, they are in no better position.

22              MR. SACKS: And it says that  
23      specifically in paragraph 14, Judge.

24              THE COURT: The point is nobody  
25      knows, everybody recognizes that there is a

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1        RANDALL'S ISLAND FAMILY GOLF CENTERS, INC.  
2        dispute regarding the extent of Chase's liens and  
3        they are saying to the extent you used property in  
4        which it ultimately turns out we have liens and  
5        you have diminished the property of that you get a  
6        replacement lien and I don't understand what's the  
7        problem with that.

8                    MS. WONG:    In paragraph 14 it  
9        provides that Morgan Lewis & Bockius will be paid  
10       any pre-petition fees and expenses.

11                   THE COURT:    Let me see.

12                   MS. WONG:    This is paragraph 14.

13                   THE COURT:    Let me just read it.    I  
14       see that.    Why are pre-petition legal fees being  
15       paid as part of the --

16                   MR. TODER:    Because that's part and  
17       parcel, they are allowing a priming to go on here.  
18       This is indeed part of an adequate protection  
19       which is the essential deal that's been cut.    If  
20       indeed that's an objection that will be raised at  
21       the end of the day.    As to the entitlement they  
22       have that complete right to do so.    But as part of  
23       the deal that's been agreed to by the parties that  
24       is part of the adequate protection.

25                   THE COURT:    I guess the answer is

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1        RANDALL'S ISLAND FAMILY GOLF CENTERS, INC.  
2        that to the extent you know your attorneys' fees  
3        are secured under the existing agreements, they  
4        can be paid but if it turns out they are not  
5        secured you may have to get it back.

6                    MR. TODER: And that is exactly  
7        right, Your Honor. That is entirely the case and  
8        there is no attempt to diminish rights of the  
9        Complaint or recharacterization or anything else  
10       in terms of it.

11                   MR. SACKS: Your Honor.

12                   THE COURT: Doesn't that solve your  
13       issue, Ms. Wong?

14                   MS. WONG: Well --

15                   THE COURT: I can't possibly  
16       determine all these issues today and assuming that  
17       the Debtor needs money there's no way to do it  
18       except, you know, everybody is reserving their  
19       rights; usually the lender insists on an  
20       immediate determination as to the validity of the  
21       amount of its claim, the validity and extent of  
22       its lien and they are not saying that. They are  
23       just saying to the extent we have liens, you know,  
24       we are entitled to this agreement. If it turns  
25       out we don't have liens, Chase has that money.

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1           RANDALL'S ISLAND FAMILY GOLF CENTERS, INC.

2                   MS. WONG:   The other problem we have  
3   is no adequate protection throughout.

4                   THE COURT:   But you concede adequate  
5   protection you are not entitled, are you lending  
6   any money?

7                   MR. SACKS:   Your Honor, we think they  
8   are adequately protected.

9                   THE COURT:   Let me take a step back  
10   because I don't think that's an issue; I don't  
11   think it's up to Chase and the Debtor to negotiate  
12   adequate protection for you.   They can't use your  
13   cash collateral --

14                  MS. WONG:   I believe they are.

15                  THE COURT:   -- without your consent.  
16   Tell me how they are using your cash collateral.

17                  MS. WONG:   We have various types of  
18   facilities, we understand that the cash which is  
19   coming into those entities is being sent to  
20   Melville, New York and is being used in a general  
21   operating account.

22                  THE COURT:   I am prepared to say that  
23   in connection with this Order that nothing in this  
24   Order will authorize the Debtor to use your cash  
25   collateral:   Doesn't that protect you?

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1           RANDALL'S ISLAND FAMILY GOLF CENTERS, INC.

2                   MS. WONG:   Except for the fact that  
3   we would like the cash collateral from those  
4   particular facilities to be put in a separate  
5   account.

6                   THE COURT:   Then you are going to  
7   have to demonstrate to me, I think, what your cash  
8   collateral was because I don't know.  They do have  
9   to segregate cash in the collateral, so you don't  
10   need an Order from me.  That's true.

11                  MS. WONG:   The other thing is that we  
12   have an absolute assignment of rents, and last  
13   week the Debtors represented that the money which  
14   was coming into these facilities were rents, and  
15   based upon --

16                  MR. SACKS:   We did not say that.

17                  MS. WONG:   -- that representation and  
18   the fact this we have an absolute assignment of  
19   rents, we are entitled to that money.  That is our  
20   money.  That money should not be commingled in any  
21   way.  I guess we can file another application with  
22   the Court asking for that in a separate Order.

23                  THE COURT:   It seems to be a dispute  
24   as to what your cash collateral is and what it  
25   isn't and that can't be resolved today.

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1           RANDALL'S ISLAND FAMILY GOLF CENTERS, INC.

2                       What I'm prepared to rule which is  
3   consistent with the Bankruptcy Code that they  
4   cannot use the cash collateral and they have to  
5   separate the cash collateral and that's what the  
6   Bankruptcy Code requires.

7                       MR. SACKS: Just so it's clear, what  
8   the issue that we had last week, the Debtor's  
9   position was exactly the opposite and it was the  
10   issue that I had with Mr. Toder is that when  
11   someone hits a golf ball they are renting the golf  
12   ball.

13                      The operations, in the Debtor's view,  
14   at the facilities that are subject to Chinatrust  
15   mortgages are not being rented, there's no rent  
16   going on there, and it is the Debtor's view,  
17   subject to checking each of the mortgages again,  
18   that there is virtually none or no cash collateral  
19   being used.

20                      THE COURT: I think you have got a  
21   real cash collateral issue. Nothing is prejudiced  
22   in your rights. Just that it's not going to be  
23   decided today, and one or the other of you is  
24   going to have to come up with a method of keying  
25   this up. So whatever rights, whatever is your

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1           RANDALL'S ISLAND FAMILY GOLF CENTERS, INC.

2       cash collateral is your cash they cannot use it  
3       without your consent.

4                   MS. WONG:   But there is a provision  
5       in here which does say that they can deposit any  
6       cash collateral into a particular account at  
7       Chase.

8                   THE COURT:   Okay.   Except your cash  
9       collateral.

10                  MS. WONG:   So if there's a carve-out  
11       for that we will accept that.

12                  THE COURT:   I don't mean to be  
13       facetious, but I think this Order ought to be  
14       resolved as soon as possible as to whether or not  
15       they have cash collateral or what extent they have  
16       because you don't want to find yourself in a  
17       contempt proceeding.

18                  MR. SACKS:   I'll look at it again  
19       this afternoon.

20                  MS. WONG:   I think the main thing  
21       here is they have not been able to show that there  
22       was a destruction of their business or there is  
23       going to be an imminent destruction of their  
24       business and that's the whole purpose of why we  
25       are here today.

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1           RANDALL'S ISLAND FAMILY GOLF CENTERS, INC.

2                       There is going to be a hearing on May  
3   30th, I believe, to determine whether or not there  
4   should be financing. There is no one from the  
5   Debtor coming in and saying that we don't meet our  
6   payroll by specific date and in a specific amount  
7   and we know for certain we have a shortfall in our  
8   cash and this will result in the destruction in  
9   our business. We need emergency relief right now.  
10   There is no one doing that.

11                   THE COURT: But how much is the  
12   Debtor seeking to borrow under the interim Order?  
13   \$5 million.

14                   MR. SACKS: 5.

15                   MR. TODER: Your Honor, may I address  
16   that briefly?

17                   THE COURT: Sure.

18                   MR. TODER: What we seem to have done  
19   is we keep swinging dramatically between two very  
20   different concepts.

21                   On the one hand what you have heard  
22   is argument as to whether or not the showing that  
23   has been made is sufficient to allow the entry of  
24   an interim Order. On the other hand when that  
25   seems to be going the wrong way, what counsel then

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1           RANDALL'S ISLAND FAMILY GOLF CENTERS, INC.

2       says is but there hasn't been enough testimony.

3                       Now the testimony, Your Honor, of  
4       course, will recall the testimony beginning, and I  
5       recall it all too well because I was  
6       cross-examining from a slightly different  
7       perspective than I'm now addressing, but in point  
8       of fact two different arguments were made which I  
9       think the Court, I believe, found to be  
10      acceptable, and that was one. The question of  
11      it's pretty darn tight, and we can't fool around  
12      with whether or not this business is going to run  
13      out of dollars because there's a short amount and  
14      we don't know whether or not collections will be  
15      sufficient and the budget shows it's tight, and  
16      secondly, there was testimony and I happen to note  
17      some of it on page 49 of the transcript.

18                   THE COURT: I don't have a  
19      transcript.

20                   MR. TODER: I just got it, literally,  
21      your Honor, but if I could just quote from it:

22                   "Question: What issues were those?

23                   "Answer: Even before the filing this  
24      morning we, because of our declaration of default  
25      by the bank's failure, default due to failure to

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1        RANDALL'S ISLAND FAMILY GOLF CENTERS, INC.  
2        pay interest, we have, our key vendors stopped  
3        making, delivering products for us, canceling our  
4        products and we couldn't service our customers  
5        properly."

6                    The English is not perfect, but the  
7        gist of it, I think, Your Honor, there and  
8        throughout the transcript, was a series of  
9        statements under oath to the affect that there was  
10       a crisis of confidence and indeed from the  
11       standpoint of both the vendors' suppliers and  
12       indeed customers, it was important that this DIP  
13       ought to be entered pronto. The Court will  
14       determine whether or not that's sufficient, but  
15       that at least was the testimony.

16                   MR. SACKS: And the exhibit that Your  
17       Honor has asked for is in evidence. It shows  
18       negative cash flow even if the weather is good,  
19       and there's also been testimony that this is a  
20       variable business depending on the weather.

21                   MS. WONG: Your Honor, I really  
22       object to that type of evidence being used to  
23       support temporary relief emergent relief in a case  
24       like this because say that it's comparing my  
25       relationships with certain vendors.

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1           RANDALL'S ISLAND FAMILY GOLF CENTERS, INC.

2                   In any bankruptcy -- in any business  
3   when you are not paying your bills your  
4   relationships are going to be impaired and there  
5   is going to be some people who will decide they  
6   are not going to do business with you anymore.

7                   THE COURT: Chinatrust was present at  
8   the hearing and didn't object to that testimony,  
9   so you can't object now.

10                  MS. WONG: Your Honor, there was an  
11   understanding that there was going to be another  
12   hearing on Tuesday where we could fully try this  
13   issue on emergency relief.

14                  MR. SACKS: That's actually not true  
15   at the time, Judge.

16                  MS. WONG: Well, the terms of the  
17   agreement have substantially changed.

18                  THE COURT: That's a different  
19   question from the relief from the need. I  
20   understand you have objections to the provisions  
21   and that you have outlined to me, but that's a  
22   different question from the relief from the need.

23                  You know I have these projections in  
24   evidence, and I also recall Mr. Chang testifying  
25   that he didn't think they weren't going to meet

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1           RANDALL'S ISLAND FAMILY GOLF CENTERS, INC.  
2   the projections, at least for the particular day  
3   that we were talking about, because of the \$2.8  
4   million that had been projected. I think 1  
5   million had been set off by the bank and that \$1.8  
6   million is was only going to be available and he  
7   was subject to cross-examination on that. And I  
8   found that to be credible.

9                   MS. WONG: Your Honor, it was my  
10   understanding that he testified that they didn't  
11   even think they were going to need the financing.  
12   That doesn't seem it me that that's a circumstance  
13   in which there's irreparable harm, and if there  
14   are vendors who are not doing business with you  
15   you can't just state that generally, you have to  
16   submit specific facts on what vendors are not  
17   doing business with you, how it's going to affect  
18   the business, what products are not being  
19   delivered, how it affects the business and I don't  
20   think any of that was presented at the hearing  
21   last week.

22                   I just I think there are so many  
23   generalities, and it was so vague in terms of what  
24   the harm was going to be to the business that I  
25   don't think that they met that threshold of

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1           RANDALL'S ISLAND FAMILY GOLF CENTERS, INC.

2           standard of showing irreparable harm.

3                       MR. SACKS: Your Honor, the  
4           irreparable harm you don't even have to get to the  
5           vendors. You only have to look at the vendors  
6           which Your Honor has done. If there's a negative  
7           cash flow in one of those weeks, we are out of  
8           business. If we don't have money to cover that  
9           cash flow, and that's before you get to the issues  
10          about weather. Before you get to the issues of  
11          those risks of those projections being wrong  
12          because of the lack of confidence in vendors.  
13          That's with confidence, with straight across  
14          projections as to revenue that's what Mr. Chang  
15          testified to, and in addition to that there were  
16          other risks. But that exhibit, those schedules  
17          standing alone demonstrate enough to get us to May  
18          30th.

19                      If Chinatrust has issues with respect  
20          to this on May 30th we will be here, we will have  
21          evidence if things haven't been resolved by then  
22          and we will try to resolve their cash collateral  
23          issue if they have any cash collateral, but the  
24          issues that have been presented by Chinatrust, as  
25          Mr. Toder pointed out, are really going in two

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1           RANDALL'S ISLAND FAMILY GOLF CENTERS, INC.  
2       directions. They didn't have an issue. They  
3       didn't have an issue on Thursday with the need for  
4       emergency. The issue with respect to Thursday was  
5       an issue as to whether there was a need for  
6       emergency relief for the weekend and not whether  
7       there was going to be a need for relief by  
8       Tuesday.

9                       MS. WONG: Your Honor, but no one has  
10      presented any evidence as of today. You know in  
11      this changing economic climate we are in, that you  
12      know there isn't any irreparable harm today. You  
13      know there might have been a concern last week,  
14      but there's no --

15                    THE COURT: So I have to have a  
16      hearing every day then to determine whether  
17      there's going to be irreparable harm in the next  
18      day?

19                    MS. WONG: No, of course not, but I  
20      don't think they have made the requisite showing  
21      that there was destruction of the business which  
22      was pending and imminent.

23                    THE COURT: I'm going to approve the  
24      interim financing. I conducted a hearing --

25                    MR. MASUMOTO: Your Honor, I did have

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1           RANDALL'S ISLAND FAMILY GOLF CENTERS, INC.

2           some objections.

3                       THE COURT: I'll get to the terms in  
4           a minute, but let's just deal with this issue of  
5           necessity. There was a hearing last Thursday  
6           evening in this Court in which Mr. Chang gave  
7           testimonial evidence and documentary evidence as  
8           well regarding this particular Debtor.

9                       The evidence was that the Debtors  
10          anticipated cash might or might not be sufficient  
11          to make the payroll that was due the next day,  
12          which was May 5th, and in the course of that  
13          hearing, however, the Debtors submitted  
14          projections which run till the end of June  
15          regarding its cash needs and its cash  
16          availability. That shows that a \$2.8 million in  
17          two weeks will occur prior to the time of the  
18          final hearing, the Debtor is going to have a  
19          substantial negative cash flow from the week  
20          ending May 19th, Debtor projects negative cash  
21          flow with approximately \$1.4 million.

22                      During the week ending June 2nd, the  
23          Debtor indicates a negative cash flow of almost  
24          \$2.2 million. Right now we are scheduled to have  
25          the final hearing May 30th. I do have a trial

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1        RANDALL'S ISLAND FAMILY GOLF CENTERS, INC.  
2        scheduled that day, and I may move it to June 2nd,  
3        which I think is a Friday. I haven't done that  
4        yet. Let me see what happens with the trial. But  
5        it doesn't matter because if the obligations  
6        become due at the beginning of the week and the  
7        money comes in at the end of the week, it may  
8        equal out in the end but that doesn't help the  
9        Debtor if it has to pay bills.

10                So the Debtor has shown through the  
11        projections that it's going to need possibly about  
12        \$3.5 million more than it's going to take in.

13                Now, the Debtor, Mr. Chang, also  
14        testified that it would not, the Debtor would not  
15        need the projections of the week ending May 5th  
16        because upon the default shortly before the  
17        bankruptcy started the bank setoff, so instead of  
18        the \$2.8 million that was supposed to come in only  
19        \$1.8 million came in which means that the Debtor  
20        could be up to \$4 and-a-half million in the red  
21        for week after the final hearing.

22                If the Debtor doesn't pay its  
23        employees which debts are included, if the Debtor  
24        doesn't pay its rent obligations which are  
25        included here, this Debtor is not going to survive

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1           RANDALL'S ISLAND FAMILY GOLF CENTERS, INC.  
2    this Chapter 11 very long; so under the  
3    circumstances, I am satisfied that Debtor has  
4    shown the need for \$5 million in interim  
5    financing, pending the final hearing on or about  
6    May 30th or June 12th, whatever that turns out to  
7    be, in fact. It like a title but in fact the  
8    Debtor has limited itself.

9                   I note that Chinatrust was present at  
10   the interim hearing or emergency hearing and had  
11   ample opportunity to cross-examine Mr. Chang or  
12   object to any questions. It did make arguments,  
13   but to my knowledge did not challenge the  
14   testimony in the form of an objection so I'm  
15   satisfied that the Debtor has shown the need for  
16   the financing. So let's get to the terms of the  
17   agreement.

18                   Mr. Masumoto, what are your  
19   questions?

20                   MR. MASUMOTO: Your Honor, just at  
21   the outset I would like to indicate that I did  
22   speak to counsel for Chase, Mr. Toder, and he  
23   represented to me and based upon my reading that  
24   there was no attempt to cross-collateralize.

25                   THE COURT: I didn't see it here.

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1           RANDALL'S ISLAND FAMILY GOLF CENTERS, INC.

2                   MR. MASUMOTO: I just wanted to  
3 confirm that for the record if that's changed --

4                   MR. TODER: Yes, just this once we  
5 won't attempt to cross-collateralize.

6                   MR. SACKS: That's our understanding  
7 as well.

8                   MR. MASUMOTO: Your Honor, if I could  
9 direct your attention to page 5, paragraph 2,  
10 which I interpreted as the provision that provided  
11 for the ability of parties to challenge the  
12 validity of Chase liens.

13                   I inquired and received  
14 confirmation that includes the Creditors Committee  
15 which is not yet in existence, but that paragraph  
16 does provide an opportunity for Creditors to give  
17 challenge.

18                   THE COURT: That is including without  
19 limiting, even if it said without limitation that  
20 is a broad term.

21                   MR. TODER: That is correct, Your  
22 Honor, and Chinatrust also intended to be among  
23 the parties that can challenge.

24                   MR. MASUMOTO: Then, Your Honor,  
25 moving on to page 8 which is part of paragraph 5,

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1           RANDALL'S ISLAND FAMILY GOLF CENTERS, INC.  
2   the carryover provision of paragraph 5, it's my  
3   understanding that paragraph 5 essentially  
4   summarizes provisions that follow more  
5   specifically. I did not see in paragraph 5 a  
6   reference to a carve-out although the more  
7   specific paragraphs below include a carve out.

8                   THE COURT: I thought I saw that they  
9   would be paying attorneys' fees irrespective of  
10  the carve-out as the case was going along, and  
11  that this carve-out was really --

12                  MR. TODER: Yes, the carve-out  
13  provisions come later in the agreed upon  
14  paragraphs in the Order -- it was not agreed upon  
15  in the Order. It is not meant by this paragraph  
16  to act as in derogation of the carve-out  
17  provisions.

18                  THE COURT: So you get carve-out  
19  plus.

20                  MR. MASUMOTO: Your Honor, I just  
21  wanted to make sure that the inconsistencies  
22  wasn't regarded as any sort of concession.

23                  THE COURT: When does the carve-out  
24  kick in?

25                  MR. TODER: It has to be a default,

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1           RANDALL'S ISLAND FAMILY GOLF CENTERS, INC.

2       Your Honor, it cannot be before.

3                   THE COURT:   It's a spiral carve-out.

4                   MR. MASUMOTO:   Well --

5                   THE COURT:   It really is not a  
6       carve-out as long as the case goes along, as I  
7       understand it, after default then there's a limit  
8       on fees.

9                   MR. MASUMOTO:   Your Honor, the point  
10      of the carve-out not to commingle with the  
11      professionals' fees but as a separate portion of  
12      the carve-out for the U.S. Trustee's fees.   Now  
13      I'm not sure, you know, if there has to be a  
14      default for that to kick in.   It's my  
15      understanding --

16                  THE COURT:   You are going to pay your  
17      U.S. Trustee's fees you have to pay the U.S.  
18      Trustee's fees regardless of the carve-out as the  
19      case is going along.

20                  MR. MASUMOTO:   That's correct, Your  
21      Honor.

22                  THE COURT:   And that's provided for,  
23      maybe it's not clearly provided for because the  
24      reference is to 330 and 331, and I don't know if  
25      there's a specific reference to paying the fees

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1           RANDALL'S ISLAND FAMILY GOLF CENTERS, INC.

2       due under --

3                   MR. TODER:  It is page 10 at the  
4       bottom, Your Honor.  We take care of 28 U.S.C.  
5       1930.  I certainly appreciate the concern of the  
6       U.S. Trustee for its own fees and admire that.

7                   THE COURT:  They don't worry about  
8       your fees.

9                   MR. MASUMOTO:  Your Honor, as to  
10      paragraph 10, if we could move, to be more  
11      specific, paragraph 10, it's my understanding is  
12      that 364(c) is one provision which is an attempt  
13      to achieve a super priority claim as to the  
14      expenses.  We have our routine objection that  
15      based upon the language, the intent is also  
16      intended to prime any Chapter 7 expenses under  
17      726.

18                  THE COURT:  Actually, they didn't  
19      even say that, usually they say explicitly.

20                  MR. TODER:  It is intended, however,  
21      Your Honor, nonetheless.

22                  THE COURT:  Mr. Toder, we have a  
23      record here and sometimes that just cannot pick up  
24      your wit, so be careful of what you say; it may  
25      come back to you haunt you.

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1 RANDALL'S ISLAND FAMILY GOLF CENTERS, INC.

2 MR. TODER: I'm sorry.

3 THE COURT: As I understand it, it's  
4 not even mentioned in the agreement, and there are  
5 no expenses or understanding that inasmuch that  
6 was the intention or understanding that this --  
7 anything or any lien or any priority that you get  
8 is going to prime any burial expenses in Chapter  
9 7.

10 MR. TODER: It is prime, and indeed  
11 we have --, its binding on all successors and  
12 interest and there's a section on that.

13 THE COURT: Well, the Order can be  
14 binding on all successors and interest and that  
15 doesn't mean that you prime Chapter 7  
16 administrative expenses.

17 MR. TODER: It is indeed binding  
18 to -- Your Honor, and if you give me a moment I'll  
19 find it. It is so intended, Your Honor.

20 THE COURT: You can't do that.

21 MR. MASUMOTO: Your Honor, it's my  
22 understanding that --

23 THE COURT: Let me just read it. I  
24 read paragraph 24 there's nothing inconsistent  
25 with saying that a trustee is bound by this Order

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1        RANDALL'S ISLAND FAMILY GOLF CENTERS, INC.  
2        because you cannot challenge liens that are  
3        validly given under this Order, or they cannot  
4        challenge Orders that are affected by this Order.  
5        But there's nothing in this Order that says that  
6        in the event that there's a Chapter 7, the Chapter  
7        11 super priority expenses prime the Chapter 7  
8        burial expenses which is inconsistent with the  
9        Bankruptcy Code.

10                MR. TODER: No, it is not  
11        inconsistent with the Bankruptcy Code because 726  
12        (b) refers to 503 -- let me get this right. It  
13        refers to 503(b) but not to 507(b), and in point  
14        of fact there's been a consistent position of  
15        every DIP lender and indeed the Southern District  
16        has consistently supported this view that indeed  
17        the objections of the U.S. Trustee on this point  
18        have been overruled because otherwise there cannot  
19        be DIP lending because in point of fact you aren't  
20        taking account of the fact that they have got to  
21        be first.

22                THE COURT: Mr. Masumoto?

23                MR. MASUMOTO: Your Honor, I think I  
24        would like to object to counsel's comment. I  
25        believe that we have always raised it and it's

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1           RANDALL'S ISLAND FAMILY GOLF CENTERS, INC.  
2   might have understanding that the Court generally  
3   is also concerned about the burial expenses of the  
4   Defendant's Excel case, and so forth, has always  
5   upheld the primacy of section 720(c).

6                       Having said that, Your Honor, I know  
7   that some courts in an attempt to compromise the  
8   matter have essentially created carve-outs  
9   sometimes for the Chapter 7 trustee.

10                      MR. TODER:  And that is acceptable to  
11   us as a compromise.  What we have done in those  
12   instances is where we have the carve-out we have  
13   included within the ambit of the carve-out  
14   provision for Trustees whether in an 11 or a 7;  
15   that's the way we have taken account of the  
16   objection.

17                      THE COURT:  The Trustee would prime  
18   any other administrative expenses; there is a  
19   million-dollar carve-out in this case.

20                      MR. MASUMOTO:  Well, just understand  
21   I'm not sure I thought the definition of the  
22   carve-out was for professionals and did not --

23                      MR. TODER:  The normal expenses, what  
24   we have done --

25                      MR. MASUMOTO:  Full-time

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1       RANDALL'S ISLAND FAMILY GOLF CENTERS, INC.  
2       representation is that the carve-out applies to  
3       Chapter 7 --

4               THE COURT:   Why don't you just  
5       provide that the carve-out will apply to the  
6       Chapter 7 Trustee and his or her commissions?

7               MR. TODER:   We will do that, Your  
8       Honor.

9               THE COURT:   Is that acceptable?  It's  
10      a million-dollar carve-out and they certainly  
11      prime any attorneys' fees or anything else that  
12      occurs under 503 arising under 503(b) in Chapter  
13      11.

14              MR. MASUMOTO:  Understood, Your  
15      Honor, and assuming without prejudicing or for  
16      judging the monthly Order, if the professionals  
17      being paid on a monthly basis, I assume --

18              THE COURT:   But that's not subject to  
19      carve-out.

20              MR. MASUMOTO:  No, I understand.  So  
21      it wouldn't be applying the carve-out to that  
22      extent.  In any event, yes, Your Honor.

23              THE COURT:   Let's just make sure we  
24      are all agreed that that carve-out, the  
25      limitations imposed by the carve-out don't start

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1           RANDALL'S ISLAND FAMILY GOLF CENTERS, INC.  
2   to occur until was this a default? And then you  
3   don't look back and add up all the money that's  
4   been paid and say, hey, we have paid a million  
5   dollars.

6                   MR. TODER: We don't do that, Your  
7   Honor and that is clear from page 10, paragraph  
8   10, Your Honor. Where it says "subject only in  
9   the event of an occurrence of an event of  
10  default," which is about a third of the way up.

11                  THE COURT: But it's a prospective  
12  carve-out.

13                  MR. TODER: Yes, indeed. And, Your  
14  Honor, that is clear.

15                  MR. SACKS: Is the carve-out we are  
16  talking about for Chapter 7 Trustee fees going to  
17  be -- it's incremental which is put in the Y  
18  clause not the X clause?

19                  MR. TODER: No, excuse me, that's not  
20  right. A million dollars is a lot of money. In  
21  point of fact, you are getting paid on a current  
22  pay basis and if the result is --

23                  THE COURT: You are getting paid on a  
24  current pay basis. If this case craters and  
25  there's a conversion, let's say there's a million

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1           RANDALL'S ISLAND FAMILY GOLF CENTERS, INC.  
2   dollar carve-out because there's a practical  
3   matter; I'm not going to approve any legal fees at  
4   a Chapter 11 the case is greater than -- until the  
5   dust settles there's a million dollar carve-out  
6   and under 726(b) the Trustee's administrative  
7   expenses, prime all of the Chapter 11, 503(b)  
8   expenses including your attorneys' fees which are  
9   503(b) expenses.

10                   That's the way it works. Is that  
11   right, Mr. Toder?

12                   MR. TODER: Yes, and I'm drafting  
13   some language, Your Honor, if I may. Just give me  
14   one second.

15                   THE COURT: All right.

16                   MR. SACKS: The fact that the  
17   Trustee's expenses come before the professionals  
18   is a different issue as to whether the million  
19   dollars includes the Chapter 7 Trustees.

20                   THE COURT: The answer is it does, it  
21   includes Chapter 7 Trustees, Chapter 7 expenses,  
22   and which would include the commissions; it just  
23   does because as a practical matter you don't get  
24   to the carve-out until there's a default.

25                   At that point there's going to be,

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1           RANDALL'S ISLAND FAMILY GOLF CENTERS, INC.  
2       assuming there's going to be a Trustee -- let's  
3       say that's at the end of the case. If the default  
4       is cured, I guess that that kind of undoes it but  
5       if you get to that point, you are either going to  
6       have a dismissal but more likely in a case like  
7       this a conversion.

8                       If a Chapter 7 Trustee is going to  
9       come in and step in and his fees are going to  
10      prime your fees or the Chapter 7 expenses are  
11      going to prime your fees, but as a practical  
12      matter the only expenses in a Chapter 7 Trustee  
13      commissions.

14                   MR. TODER: What I have done, Your  
15      Honor, is five lines up from the bottom of page 10  
16      paragraph 10, after the word cases (the cases),  
17      where it says, I have put "and the fees  
18      commissions, and expenses of any Chapter 7 Trustee  
19      and his or her professional" --

20                   MR. SACKS: Your Honor, what that  
21      winds up with is the Debtors not having any  
22      carve-out for their professional fees after a  
23      Chapter 7 Trustee.

24                   THE COURT: That is a million dollar  
25      carve-out.

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1           RANDALL'S ISLAND FAMILY GOLF CENTERS, INC.

2                   MR. FIRST: We will be diluted down  
3 by the Chapter 7 effectively from when there's  
4 effectively there's no carve-out because it says  
5 it's a million carve-out for the benefit of the  
6 Chapter 7 Trustee because once you have the  
7 default they could continue to dilute it down to  
8 almost zero. That's in effect once you default we  
9 are not getting any protection and neither are the  
10 Creditors in this case. That's why it should be  
11 incremental.

12                  MR. TODER: It's not going to be  
13 increments. This is a \$15 million DIP which we  
14 have creating a million dollar carve-out.

15                  THE COURT: Let me propose a  
16 hypothetical. Let's say you have gotten paid all  
17 your legal fees and expenses in full during the  
18 Chapter 11, the case converts.

19                  The Trustee working on spec accrues a  
20 million dollars in legal fees which are allowed.  
21 Where do you think that money is going to come  
22 from? It's going to come from the Chapter 11  
23 expenses that were paid ahead of him, if the  
24 estate is assuming the Chapter 7 estate.

25                  MR. SACKS: The issue isn't that,

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1        RANDALL'S ISLAND FAMILY GOLF CENTERS, INC.  
2        Judge. The issue is whether that dilutes the  
3        carve-out that was negotiated between the Debtors  
4        and Chase for post default. And that's what it's  
5        doing, what it's doing is taking the entire  
6        carve-out which the Debtors and Chase negotiated  
7        and basically saying in that circumstance, the  
8        Debtors don't have any professionals.

9                THE COURT: Maybe the corporate  
10       resolution is to cap the Chapter 7 carve-out.

11               MR. FIRST: If I may, in your  
12       circumstance the positive that the Debtors  
13       professionals paid in full so then obviously the  
14       dilutions is the minimis, but in fact they may not  
15       have paid us.

16               THE COURT: But during that case you  
17       are not going getting paid out of the carve-out.

18               MR. FIRST: No. I appreciate that,  
19       but once there's a default then it starts to click  
20       into the million, at that point you know if we  
21       just got paid there's another three-month period,  
22       and right at the end there, in fact, the thing  
23       defaults. Then we could have three months of  
24       potentially fees, and that's the purpose of the  
25       million dollars because we wouldn't have been

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1           RANDALL'S ISLAND FAMILY GOLF CENTERS, INC.

2   paid.

3                   THE COURT:  My suggestion is to see  
4   if you can agree on a cap on the carve-out in  
5   Chapter 7 estate.  I understand your concern when  
6   a Chapter 7 Trustee has to have some, you know,  
7   some money or I guess they don't have to but it  
8   just seems to me that we are talking about numbers  
9   at this point.  And you can agree to a cap will  
10   satisfy the U.S. Trustee who at this point, I  
11   guess, is speaking for the potential Trustee.  The  
12   Chapter 11 professionals and the bank.  I note  
13   that well --

14                  MR. TODER:  Your Honor, two things.  
15   This came up because of U.S. Trustee raising a  
16   concern over 726 which in point of fact I don't  
17   think is necessary; necessary to me meaning it has  
18   to come out that way at all because I believe that  
19   if you look at 507(b) if you look at 364(c) (1)  
20   you will see that makes reference to not just 503  
21   but also 507(b).  That's what makes this  
22   different.

23                  THE COURT:  And if Congress had  
24   intended to do a 507(b) --

25                  MR. TODER:  Exactly.

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1           RANDALL'S ISLAND FAMILY GOLF CENTERS, INC.

2                   THE COURT:   A 726(b) instead of a --  
3   it would have said versus a 364(c); is that where  
4   you are going?

5                   MR. TODER:   Exactly yes, sir.   And  
6   that's why we don't even have to get there and  
7   respectfully, Your Honor, that's what most of the  
8   courts in this district discussing this have done.

9                   In a minority of the situations, what  
10   they have done is to say I'll feel more  
11   comfortable if we include within the carve-out;  
12   that's a minority.   I can only speak for the Chase  
13   cases, but there have been a lot of them as Your  
14   Honor knows.

15                  THE COURT:   Right.   You see but in a  
16   lot of cases also, if the Trustee recovers on  
17   avoidance claims that money could be used to pay  
18   the Chapter 7 expenses; now here, although your  
19   liens are not touching your avoidance claims your  
20   super priority claims are going to be paid for,  
21   that there's nothing for the Trustee.

22                  MR. TODER:   Nothing for the Trustee;  
23   it should only turn out that way yes but, Your  
24   Honor, it is technically correct.

25                  THE COURT:   Technically?

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1           RANDALL'S ISLAND FAMILY GOLF CENTERS, INC.

2                   MR. TODER:  Accurately, but in point  
3   of fact, Your Honor, I think it's fair to say that  
4   the distributive scheme of the Code is such that I  
5   believe that is how it comes out.

6                   THE COURT:  How do you propose this  
7   be resolved?  Since we are talking about the  
8   Debtor's operations and this is a fight amongst  
9   professionals.

10                  MR. TODER:  I know.  I would have  
11   thought a modest cap for the burial expenses would  
12   satisfy the people; that number could be \$50,000,  
13   a hundred thousand but that's a lot of money.

14                  THE COURT:  Sounds like an  
15   appropriate way to resolve this issue, since the  
16   Debtor needs this money for operations and right  
17   now you are holding it up.

18                  MR. SACKS:  For this Order can we do  
19   it at 50, Judge, and then --

20                  MR. MASUMOTO:  Your Honor I think 50  
21   is much -- this is a case with how many Debtors?  
22   Over 130 Debtors.  It's a very large case.  The  
23   idea that a Chapter 7 Trustee --

24                  THE COURT:  What's the number that  
25   you think would be appropriate?

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1           RANDALL'S ISLAND FAMILY GOLF CENTERS, INC.

2                   MR. MASUMOTO: Subject to revisit if  
3 they wish to revisit it for the final, why don't  
4 we say at this moment \$150,000 for the Chapter 7?

5                   THE COURT: Rather than revisit it,  
6 look, why don't we just fix it at a hundred and  
7 just leave it at that. The Trustee, I don't know  
8 how much of an expense the Trustee is going to  
9 incur in this case. To the extent he recovers on  
10 a grievance action, for example, that money is  
11 going to go to the bank. If bank doesn't want to  
12 increase the carve-out, it's not what he or she is  
13 going to bring that action.

14                  MR. SACKS: The real issue here is an  
15 issue that was not something that Chase and the  
16 Debtors contemplated.

17                  THE COURT: I understand that.

18                  MR. SACKS: You understand the reason  
19 the reason I said leave that to final hearing is  
20 that it seems to me --

21                  THE COURT: That's why the U.S.  
22 Trustee is here because he can't think of  
23 everything.

24                  MR. SACKS: -- this is something that  
25 neither Chase nor the Debtors contemplated.

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1           RANDALL'S ISLAND FAMILY GOLF CENTERS, INC.

2                   THE COURT:   That's true.

3                   MR. SACKS:   This Order takes us to  
4   the final hearing, why can't Mr. Masumoto reserve  
5   his rights?

6                   THE COURT:   You are right, there's  
7   not going to be a default between now and the 14  
8   days from now and maybe that's the answer and they  
9   are only going to loan at most \$5 million, if that  
10   much, and if there are avoidance recoveries there  
11   are going to be avoidance recoveries beyond any  
12   claim they have, it makes sense to put this issue  
13   aside and deal with it at the final hearing.

14                  MR. MASUMOTO:   That's fine.

15                  THE COURT:   Because if there's a  
16   Chapter 7 hearing between now and the liquidation  
17   hearing, we are spending too much time.

18                  MR. MASUMOTO:   I would have liked to  
19   object.   I already heard Your Honor's position,  
20   but we would have objected to the super priority  
21   over the avoidance action.   We take the position  
22   that these are bankruptcy created assets that  
23   belong, and into this context we usually say  
24   Unsecured Creditors.

25                  THE COURT:   You see that's the thing,

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1           RANDALL'S ISLAND FAMILY GOLF CENTERS, INC.

2   I understand the argument they adopt at the time a  
3   lien on the avoidance recovery, but once they are  
4   un-secure they have a super priority claim and  
5   after you decide the Order of distribution of  
6   their super priority claim vis-a-vis the expenses,  
7   the money comes in and it gets paid for the  
8   priority.

9                   I don't see how you can say, for  
10   example, that certain Creditors can't recover for  
11   certain types of actions other than if they sue  
12   the banks; the bank obviously cannot use, they  
13   can't recover on its claim the money it has to be  
14   paid.

15                   MR. MASUMOTO: We have noticed an  
16   organizational meeting for this Friday at which  
17   time we hope the committee shall be formed.

18                   I would like, Your Honor, I  
19   understand the need to approve this Order quickly,  
20   I would like to at least reserve the Creditors  
21   Committee's ability since they are all Creditors.

22                   THE COURT: This is a final Order,  
23   this Order will only affect at most \$5 million.  
24   You have to understand that.

25                   MR. MASUMOTO: I understand.

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1           RANDALL'S ISLAND FAMILY GOLF CENTERS, INC.

2                   THE COURT:   Which I know is a lot of  
3   money, but in a case like this is probably a drop  
4   in the bucket.  I think these Orders have probably  
5   billed that much I think it's --

6                   MR. MASUMOTO:  The committee can take  
7   it up.

8                   THE COURT:  I realize you are here  
9   now and there's no Creditors Committee, but I  
10  think that's an appropriate issue.

11                  MR. MASUMOTO:  Very good, Your Honor.

12                  Your Honor, at the bottom of  
13  paragraph 10 which is at the bottom of page 5,  
14  there's a reference to termination of the  
15  carve-out in the event of a termination date  
16  occurs in the event of termination.  This refers  
17  to the letter of credit account.

18                  My concern is, well, specifically  
19  with respect to United States Trustee's fees, but  
20  also with respect to the professionals, that we  
21  offer as you know, Your Honor, we seek a carve-out  
22  both from the super priority claim, the admin  
23  claim as well as a lien.  I don't see any  
24  difference between a letter of credit account,  
25  which is essentially funded by the Debtors

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1           RANDALL'S ISLAND FAMILY GOLF CENTERS, INC.

2           operation. I think --

3                   THE COURT: What do you mean a  
4           termination of the carve-out?

5                   MR. MASUMOTO: Well, in the  
6           second-to-last line it refers to the carve-out and  
7           then it says "provided that following the  
8           termination date as defined in the term sheet  
9           amounts to the letter of credit account shall not  
10          be subject to the carve-out," so in other words,  
11          the amount of the letter of credit account which  
12          are, I think, if I understand the mechanics  
13          correctly, which are funded by the operation of  
14          the Debtor will be exempt from the carve-out.

15                   THE COURT: I guess I don't know what  
16          that means, but maybe you can explain it.

17                   MR. TODER: I think I can, Your  
18          Honor. First of all we have to understand this is  
19          not a big cash collateral account. This is a  
20          discrete admin account and it covers a special  
21          situation.

22                   Because of the fact that the Debtor's  
23          needs oftentimes create or can create situations  
24          where a letter of credit extends beyond the  
25          confines of the agreement, the agreement has a

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1        RANDALL'S ISLAND FAMILY GOLF CENTERS, INC.

2        maturity date but business exigencies sometimes  
3        require going beyond it.

4                    To the extent the maturity date  
5        occurs -- the termination date occurs and you have  
6        got an LC hanging out there, there's no longer the  
7        normal requirements and protection set into the  
8        borrowing phase or anything else, and for that  
9        reason it's required that such an amount as set  
10       over/hang be cash collateralized, so this is a  
11       very narrow distinct one and it's for that limited  
12       purpose and it's in view of the deed of the fact  
13       that it goes beyond the expiration date of the  
14       agreement that we created and that's why it's  
15       not --

16                   THE COURT:    Again, the sale, this  
17       doesn't sound like something that's going to occur  
18       or has to be decided today.

19                   MR. MASUMOTO:    If I could reserve our  
20       rights as to the final you make.

21                   THE COURT:    Yes.

22                   MR. MASUMOTO:    But again, frequently,  
23       as your Honor knows, the fees being on a quarterly  
24       basis, frequently our fees aren't paid we are  
25       often left hanging after all these professionals

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1        RANDALL'S ISLAND FAMILY GOLF CENTERS, INC.  
2        removed as to the termination date occurs between  
3        the billing dates.

4                    So yes, Your Honor, I would certainly  
5        like to reserve for the final hearing.

6                    In paragraph 11 there's a reference  
7        to the events of default. As included in the term  
8        sheet those events of default appear to exclude  
9        the usual provisions, and refer to an event of  
10       default.

11                   I believe that the events of default  
12       are discussed in the term sheet and those events  
13       of default, page 13 of the term sheet on item  
14       sheet, is where the events of defaults begin, they  
15       include the appointment of a Chapter 11 Trustee  
16       and examiner with extended powers.

17                   As Your Honor knows we typically  
18       object to those provisions being events of  
19       default, since it removes the discretion of the  
20       Court to properly administer the case and the  
21       situations in which that they arise.

22                   THE COURT: It doesn't affect my  
23       discretion, but putting aside the effect of the  
24       default, cannot a lender decide: Gee, I just  
25       don't want to lend if new management comes in or

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1           RANDALL'S ISLAND FAMILY GOLF CENTERS, INC.  
2       something happens. I mean they can set the terms  
3       under which they want to lend, right?

4                       MR. MASUMOTO: I understand, Your  
5       Honor.

6                       THE COURT: The real issue is the  
7       termination of the business, in essence, in the  
8       event of a default. And then, one of two things  
9       are going to occur in event of default. Either  
10      they will be adequately protected, in which case  
11      someone will come in and seek an injunction to  
12      permit the Debtor, to allow the Debtor to continue  
13      to use their property because they are adequately  
14      protected, or they are not adequately protected in  
15      which case they couldn't use their property under  
16      33. Or they couldn't use their cash under 363(c),  
17      so you know it doesn't really have an impact on  
18      the case in that sense.

19                      I guess what I'm saying, if there's  
20      an event of default and the Debtor believes that  
21      they are adequately protected they will seek some  
22      sort of injunction to which they will probably  
23      get.

24                      MR. MASUMOTO: Again, our concern is  
25      that the appointment of a Chapter 11 Trustee is

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1       RANDALL'S ISLAND FAMILY GOLF CENTERS, INC.  
2       it's going to cost you default so it really  
3       precludes Your Honor from considering that as an  
4       option.

5               THE COURT:  It doesn't preclude me at  
6       all, if that's the way the case goes.  That's the  
7       way the case gets why can't they say, look,  
8       there's a Chapter 11 Trustee we don't want to lend  
9       him our business.

10              MR. MASUMOTO:  Your Honor, I think  
11       that is certainly a business decision that they  
12       would have to make.

13              THE COURT:  But you are telling me  
14       that they cannot make that decision?

15              MR. MASUMOTO:  I certainly think  
16       that, again, in the event of if circumstances  
17       arise they can come in for an Order of the Court  
18       terminating their cash collateral.

19              THE COURT:  Doesn't sound like the  
20       deal they made.

21              MR. MASUMOTO:  Again, Your Honor, it  
22       certainly again it's a matter from the standpoint  
23       of our office, we are certainly concerned about  
24       these automatic provisions that tend to foreclose  
25       these options.

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1           RANDALL'S ISLAND FAMILY GOLF CENTERS, INC.

2                       You are right, Your Honor, legally  
3   Your Honor can appoint a Trustee in a case  
4   administratively solvent with no assets, but  
5   practically many judges would be reluctant to do  
6   so, and that is our concern that this provision  
7   effectively rules out the appointment of a  
8   Trustee.

9                       MR. TODER:  I won't spend more than a  
10   second.  We bent over backwards on this because  
11   it's a 30-day window.  He didn't read it.

12                      THE COURT:  What's a 30-day window?

13                      MR. TODER:  We give him 30 days for  
14   the appointment of a Trustee before it's an event  
15   of default.  We have actually built in a grace  
16   period.

17                      THE COURT:  What does that do?

18                      MR. TODER:  It makes a great  
19   difference.  The concept underlying this is no,  
20   you borrow it.  We want to see who the Trustee is.  
21   We give them 30 days and at that point they can  
22   find another DIP and take it out or will it be  
23   comfortable with the Trustee, and this one what  
24   bothers me sometimes, and I apologize, it's like  
25   there's a knee-jerk reaction on some of these I

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7 THE COURT: Okay.

15 MR. MASUMOTO: Very well, Your Honor.

21 MR. MASUMOTO: Very good, Your Honor.  
22 Your Honor, also in paragraph 11 there is language  
23 towards the end of that paragraph.

25 THE COURT: Are we back on the record

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1           RANDALL'S ISLAND FAMILY GOLF CENTERS, INC.

2   now?

3                   MR. MASUMOTO:  Yes, the interim Order  
4   in paragraph 11 on page 11 the latter portion of  
5   paragraph 11 refers to prohibition against any  
6   506(c) claims being asserted without the written  
7   consent of Chase.

8                   Again, Your Honor -- well, not again.  
9   Your Honor, the position of the U.S. Trustee's  
10  Office is that this again removes the discretion  
11  for appropriate compensation to Creditors who may  
12  seek to preserve the estate and removes the  
13  discretion of the Court to exercise that  
14  discretion.

15                  THE COURT:  It's not a question of  
16  discretion it just takes away a right.  What's  
17  your response to that Debtors?  What's the quick  
18  quid pro quo for the waiver of the 506(c)?

19                  MR. TODER:  Shall I respond, Your  
20  Honor?

21                  THE COURT:  Sure.

22                  MR. TODER:  Basically, Your Honor,  
23  what this says in effect is don't help us.

24                  THE COURT:  You just abandon the  
25  property, say here's your property?

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1           RANDALL'S ISLAND FAMILY GOLF CENTERS, INC.

2                   MR. TODER:  And in a real world what  
3   always happens is you sit down with the Trustee or  
4   the whoever there happens to be and you work out  
5   and cut a deal and that's what it is but this sets  
6   out it's sort of a warning.  Come to see us, in  
7   effect.  It's not unfair.

8                   MR. MASUMOTO:  Again, Your Honor --

9                   THE COURT:  Yes, I remember when I  
10   was a Chapter 7 Trustee, I would go to the secured  
11   lender and say this is the course of preserving a  
12   property or building or something and where is the  
13   money, and they would say, well, it's your problem  
14   I would say take your building, or you can sell it  
15   to bankruptcy; those are your choices.  And you  
16   know what they do, they pay the expenses.

17                  MR. MASUMOTO:  You are absolutely  
18   right.  It certainly preserves the options.

19                  THE COURT:  Well, you don't have the  
20   option, I shouldn't say you, the Debtor and  
21   whoever else there is that has to decide has the  
22   right, can't seek a 506(c) surcharge and I suppose  
23   you could say the Creditors don't have the same  
24   option that the Trustee has to take your property.  
25   But you know, as I have said, that's the deal

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1           RANDALL'S ISLAND FAMILY GOLF CENTERS, INC.  
2    they have made. There's a million dollar  
3    carve-out, and as a practical matter if the  
4    property has some value, that he doesn't want to  
5    own the driving range, doesn't want to own these  
6    golf courses or any of these things, and either  
7    they will reach an agreement with the Trustee or  
8    the Trustee will say: Here it is, take the  
9    property. Fire your security and go take care of  
10   it, sell if you want. That's the way the world  
11   works in Chapter 7.

12                   MR. MASUMOTO: But, Your Honor, we  
13   will defer to your position in the matter as I  
14   have said.

15                   THE COURT: You know there is nothing  
16   that as a matter of law prevents a Trustee or a  
17   Creditors Committee from waiving a 506(c)  
18   surcharge. I don't think it's a particularly  
19   important point, as long as the Debtor doesn't  
20   have to stay in business and incur administrative  
21   debts so they can sell their property, or  
22   something like that.

23                   MR. MASUMOTO: Well, then certainly  
24   Your Honor, at least to the extent that we have a  
25   final coming up and a committee be appointed.

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1           RANDALL'S ISLAND FAMILY GOLF CENTERS, INC.

2                   THE COURT: This is just an interim  
3 Order.

4                   MR. MASUMOTO: We reserve the right.

5                   THE COURT: This is an interim Order.

6                   MR. MASUMOTO: Your Honor, the next  
7 paragraph is with respect to, again, on page 13  
8 paragraph 14, again, there is a reference to  
9 essentially what is the priming of 726(b)  
10 expenses. I think we have covered it, I'm just  
11 noting again for the record that there is a  
12 priming included in that paragraph.

13                   THE COURT: Okay. You are going to  
14 have to deal with that in some satisfactory  
15 manner.

16                   THE COURT: Between now and then.

17                   MR. MASUMOTO: And again, just  
18 noting, again, for the record that paragraph 15  
19 there's also language in there with regard to the  
20 super priority claim of priming 726(b) expenses,  
21 and again I imagine that that will be addressed at  
22 the final.

23                   Next, Your Honor, in paragraph 18 on  
24 page 15, the concern that we have with respect to  
25 that paragraph is that even in the instance where

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1       RANDALL'S ISLAND FAMILY GOLF CENTERS, INC.  
2       the lenders are oversecured, this provision  
3       essentially prohibits any lending even if they  
4       would give a character suit or lien of interest,  
5       so we feel that it's overreaching and should not  
6       necessarily preclude borrowing under the  
7       circumstances where the parties are completely  
8       unsecured.

9               THE COURT: That's the Debtors not  
10       the lender. Basically, you are tying your hands  
11       and he is saying with respect to a second loan,  
12       assuming you can adequately protect it, it's not  
13       just oversecured but assume you can adequately  
14       protect the bank.

15              MR. SACKS: Where we were in terms of  
16       the needs at the time that this was negotiated,  
17       Your Honor, we don't contemplate needing  
18       additional funding and this was the terms that we  
19       negotiated with Chase.

20              THE COURT: Okay. You made a  
21       business decision they are willing to take that  
22       risk.

23              MR. MASUMOTO: Very well, Your Honor.

24              On page 17 on paragraph 23, this is a  
25       provision that deals with vacating the Order of

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1        RANDALL'S ISLAND FAMILY GOLF CENTERS, INC.  
2        the stay, and so forth. It does provide for five  
3        days, business day notice, but Your Honor, the  
4        last portion of that paragraph seems to indicate  
5        an ability essentially a self-executing provision  
6        that allows them to take immediate action without  
7        any Court Order.

8                THE COURT: You mean the one about  
9        the right to use cash collateral?

10               MR. MASUMOTO: Yes, towards the  
11        bottom of paragraph 23 where it says, "All rights  
12        and remedies provided for in the term sheet, that  
13        they may take action, effective'" --

14               THE COURT: After five days.

15               MR. MASUMOTO: Right, after five days  
16        notice without a Court Order.

17               THE COURT: Except for this Order.

18               MR. MASUMOTO: Yes, and Your Honor,  
19        our concern is, again, I believe it was as  
20        presented to me by Chase, the intent is really to  
21        switch the burden to either allow either the  
22        Debtor or the Committee --

23               THE COURT: That's why I said you can  
24        come in and seek an injunction.

25               MR. MASUMOTO: Yes, although I can't

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1        RANDALL'S ISLAND FAMILY GOLF CENTERS, INC.  
2        think of many scenarios if, for example, the  
3        Debtors and Creditors Committee have essentially  
4        washed their hands off the case, this essentially  
5        permits the Secured Creditor to, in effect,  
6        recovery to take any action without the Court  
7        being aware. Nobody will come in with an Order  
8        objecting, if the Debtor decides there's no point  
9        in pursuing this case -- and the Creditors.

10                THE COURT: But if the, putting aside  
11        the Debtor because the Debtor might not care but  
12        if the Creditors Committee decides there's no  
13        point in pursuing the case, it's probably based on  
14        the determination that there's no money in the  
15        case, then it's up to the Secured Creditor to  
16        liquidate the property outside of bankruptcy.

17                MR. MASUMOTO: Certainly the type of  
18        remedy that that would entail or the situation  
19        that would typically arise in which essentially  
20        needs a means a cratering of the case even the  
21        Court should be apprised of that circumstance. So  
22        essentially I do believe that, Your Honor, that  
23        there's concern about self-executing an Order even  
24        with the notice.

25                If the Court and certainly the U.S.

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1           RANDALL'S ISLAND FAMILY GOLF CENTERS, INC.

2   Trustee is not aware of what's occurring.  And  
3   therefore --

4                   THE COURT:  Well, there's going to be  
5   a notice.

6                   MR. MASUMOTO:  But a notice, unless  
7   I'm mistaken, I don't think the notice goes to the  
8   Court or the U.S. Trustee.

9                   MR. TODER:  The notice does not go to  
10   the Court, but the Court doesn't want to be in the  
11   business of making these decisions.

12                   THE COURT:  You said it will be  
13   posted on the Internet.

14                   MR. TODER:  But what will be provided  
15   for is the credit agreement that will be not just  
16   given just to the Debtor but to the Creditors  
17   Committee and we always include the U.S. Trustee  
18   in that as well so there will be more than enough  
19   people who can drop the ball.

20                   THE COURT:  This is a very typical  
21   petition which does shift, usually the objection  
22   is the amount of time, five business days sounds  
23   okay, but the purpose is your Creditors don't want  
24   to come back for it and anybody is free to come  
25   back.  Suppose that this Order said they will have

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1           RANDALL'S ISLAND FAMILY GOLF CENTERS, INC.  
2   to settle an Order on five days notice, how is  
3   that different?

4                   MR. MASUMOTO: Your Honor, in fact.  
5   That is what I would frankly prefer. At least  
6   that way the Court would be apprised of the rather  
7   drastic remedies that are being exercised. I have  
8   no problems with an Order to be submitted or I'll  
9   present them, but at least this would provide  
10   official notice.

11                  THE COURT: I guess you could  
12   continue to object about it over the next two  
13   weeks. It's not an issue that has to be resolved  
14   today.

15                  MR. MASUMOTO: Very good.

16                  THE COURT: I don't know why you put  
17   so much into these interim orders.

18                  MR. TODER: It's for your benefit we  
19   do it.

20                  THE COURT: I appreciate it.

21                  MR. MASUMOTO: Your Honor, those are  
22   all the objections I have at this point.

23                  THE COURT: Thank you. Anything  
24   else?

25                  MS. WONG: Your Honor, I would like

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1           RANDALL'S ISLAND FAMILY GOLF CENTERS, INC.  
2   to put on the record Chinatrust's objections to  
3   the Order and term sheet and I would join with the  
4   Trustee to the extent his objections and his  
5   concerns, in effect, Chinatrust interests, I would  
6   join in his objections and would like to preserve  
7   on anything he has raised of rights here.

8                   THE COURT:   Okay.

9                   MS. WONG:   There seems to be a  
10  reference to 364 throughout and I wanted to  
11  clarify that.  Chase is not seeking to record its  
12  mortgages which were not previously recorded.  And  
13  that they are not seeking the right to do so.  
14  That was just a question.

15                  THE COURT:   The only thing they are  
16  not recording is the liens they are getting with  
17  respect to the post-petition financing and the  
18  adequate protection for the use of a cash  
19  collateral.  That's my understanding.  Is that  
20  right, Mr. Toder?

21                  MR. TODER:   Yes.  If you recorded  
22  something from pre-petition.

23                  THE COURT:   In other words, they  
24  can't approve their pre-petition position.  If  
25  they were perfecting a petition and they were

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1        RANDALL'S ISLAND FAMILY GOLF CENTERS, INC.  
2        perfecting and it were perfected and if their  
3        collateral includes either cash collateral or I  
4        suppose noncash collateral which is damaged, for  
5        instance, more diminished in value then they would  
6        get a replacement lien and at least with respect  
7        to the financing if it is such they will get a 364  
8        priority, they will get a different kind they will  
9        get a cash collateral and they will get an  
10       adequate protection shortfall claim for the other  
11       stuff.

12                    MS. WONG: I understand.

13                    THE COURT: If they are not, they  
14       believe that they are fully secured. If it turns  
15       out that they are not, well then they didn't have  
16       any cash collateral that the Debtor used and  
17       that's the simple answer. Or they didn't have any  
18       noncash collateral whose value the Debtor or  
19       somebody else diminished, so it all hinges, it  
20       doesn't improve their pre-petition position.

21                    MS. WONG: Going to paragraph 15 of  
22       the Order makes reference to the non-Chase  
23       lenders. I believe the replacement lien that is  
24       being offered by the Debtors comes after Chase's  
25       replacement lien and we would object to that.

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1           RANDALL'S ISLAND FAMILY GOLF CENTERS, INC.

2                   THE COURT:  Let me just -- I am sorry  
3   could you represent that because we are getting  
4   two types of liens here they are getting  
5   replacement lien for the use of cash collateral or  
6   presumably the diminution of value of noncash  
7   collateral.

8                   And that steps into the position of  
9   the collateral that was used to diminish, as I  
10  understand it.  With respect to the financing,  
11  putting aside their priming itself which I don't  
12  fully understand, they are simply getting a first  
13  lien on unencumbered property and a subordinate  
14  lien to the existing rights on the property.

15                  MR. TODER:  We have not treated the  
16  non-Chase lender differently than Chase with  
17  regard to the adequate protection insofar as the  
18  replacement liens that are granted.

19                  THE COURT:  Maybe I should ask you  
20  what your concern is before we all comment on it  
21  and before you've had a chance to tell us.

22                  MS. WONG:  We were concerned that the  
23  liens that Chase was getting here, I think I was  
24  addressing the replacement liens.  I thought that  
25  our replacement lien came after Chase's and that

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1           RANDALL'S ISLAND FAMILY GOLF CENTERS, INC.

2   it will be inappropriate since we had a secured  
3   interest, especially in the --

4                   THE COURT:  My understanding, maybe  
5   people should correct me if I am wrong, when you  
6   are talking about diminished pre-petition  
7   collateral whether it was cash collateral or  
8   noncash collateral, the replacement lien has to  
9   put you in the same position you were in.

10                   For example, if the non-Chase lender  
11   has a first lien and Chase has a second lien, to  
12   the extent Chase's cash collateral is used, the  
13   replacement lien they get is still behind,  
14   assuming that Chase had a lien in the same -- let  
15   me take an example of property which is not cash  
16   property during which Chinatrust has a first lien  
17   and Chase has a second lien.  Well, to the extent  
18   that there's a diminution of value, it would lower  
19   your value initially, whatever lien, and to them  
20   secondarily.  With respect to cash collateral  
21   whatever cash collateral is used they get a  
22   replacement lien that fits right into whatever  
23   position they were in.

24                   MR. TODER:  There is no attempt to  
25   prime anyone's liens other than our own, therefore

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1           RANDALL'S ISLAND FAMILY GOLF CENTERS, INC.

2       replacement liens do not come ahead of existing  
3       pre-petition valid liens.

4                       MR. FIRST:   That is our  
5       understanding.

6                       THE COURT:   You just have to separate  
7       pre-petition from the post-petition liens you are  
8       getting.

9                       MR. TODER:   I think it works.

10                      MS. WONG:   I think the language in  
11       paragraph 15 is, though questionable, where it  
12       says that, I guess when we get to the fourth line,  
13       each non-Chase lender is granted.

14                      THE COURT:   Let me make a suggestion.  
15       I don't think doing this all on the record is  
16       particularly helpful.   Why don't we take a recess  
17       why don't you express your concerns to Mr. Toder  
18       and Mr. Sacks and maybe this can just be resolved  
19       with some language changes and why don't we  
20       reconvene at 2:30, it's 1:30 now.   Unless you are  
21       telling me it can be done in 15 minutes or so, you  
22       want to do that?

23                      MR. TODER:   Yes, it either can or  
24       cannot be but 15 minutes will suffice.

25                      THE COURT:   If I say 15 minutes, I

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1           RANDALL'S ISLAND FAMILY GOLF CENTERS, INC.  
2    know it's going to be longer than 15 minutes but  
3    it just seems to me that everybody is in agreement  
4    but they are just not expressing it to everybody's  
5    satisfaction but because the bottom line is my  
6    sense is the non-Chase lenders are in no different  
7    position under this Order than they were, they  
8    are, without the Order, whatever liens Chase had  
9    they had, nobody can use Chinatrust cash  
10   collateral, to the extent it is cash collateral,  
11   to the extent Chinatrust has cash collateral or  
12   that has to be separated, none of that is being  
13   affected by this Order and everybody seems to  
14   agree that that is the case.

15                   It just sounds like it would make  
16   more sense if you use your time better to sit down  
17   and look at the Order, do you want to did it, and  
18   go back to somebody's office. I know you are all  
19   anxious to get out of here, but the more you rush  
20   the longer it's going to take.

21                   MS. WONG: Your Honor, I wonder  
22   whether we could reconvene so that we could  
23   actually maybe put everything in writing, put our  
24   objections on to the record.

25                   THE COURT: No, well, that you can do

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1           RANDALL'S ISLAND FAMILY GOLF CENTERS, INC.

2       to the final Order. I understand, I just want to  
3       make sure that all these language issues are  
4       resolved so we are talking about the substance.

5                   A lot of the objections that are  
6       raised are simply not going to come up in the next  
7       two weeks, and don't really give Chase any  
8       benefit, for instance.

9                   The remedial parts of the Order are  
10      events of default really don't matter over the  
11      next two weeks because it's not going to be a  
12      default and there will just be changes.

13                  MS. WONG: I wanted to make sure that  
14      we didn't raise any objections today to certain  
15      portions of the Order that we weren't waiving our  
16      right to raise them later on two weeks from now.

17                  THE COURT: But there are certain  
18      things that will be affected, for example, to the  
19      extent they get adequate protection, the money  
20      they loan between now and two weeks from now  
21      whatever this Order says about the type of  
22      protection they get is going to be, to say unless  
23      it's a bad faith or you get a stay pending appeal;  
24      so I think those are the things you have to be  
25      concerned about today; you are not waiving any

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1       RANDALL'S ISLAND FAMILY GOLF CENTERS, INC.  
2       objections to the final Order, that doesn't mean  
3       that things that happen over the next two weeks  
4       don't affect your rights but things like defensive  
5       default, I'm not saying they are not important  
6       they are just not important today.

7                   MS. WONG: We do not believe we are  
8       getting adequate protection with this higher  
9       Order.

10                  THE COURT: Well, you haven't asked  
11       for adequate protection so you are not going to  
12       get any adequate protection. The only question is  
13       whether you are getting primed or something like  
14       that.

15                  MR. TODER: We actually gave them  
16       something they weren't entitled to, it was our  
17       biggest mistake we should have just wiped it off.  
18       Maybe we should just delete it.

19                  THE COURT: Your right is to make a  
20       motion for adequate protection.

21                  MS. WONG: We are going to file a  
22       motion for adequate protection.

23                  THE COURT: I have already said the  
24       cash collateral, but as to noncash make your  
25       motion.

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1           RANDALL'S ISLAND FAMILY GOLF CENTERS, INC.

2                   MS. WONG: Well, I think the problem  
3 is that Chase and the Debtors do have to give some  
4 kind of consideration to the non-Chase lenders,  
5 and that's why they gave us this so it would be  
6 more acceptable; however, there are some problems  
7 with this agreement, I don't know if we are going  
8 to be able to work things out.

9                   MR. SACKS: All we really needed to  
10 do, Judge, is not prime them which we haven't done  
11 and then we made the mistake of giving them  
12 adequate protection even though we didn't prime  
13 them.

14                  MR. TODER: Maybe we should just put  
15 down the adequate protection; that would work for  
16 me as well.

17                  THE COURT: Rather than posture on  
18 the record let's go off the record.

19                         (Discussion off the record)

20                         (Whereupon, at this point in the  
21 proceedings there was a recess, after which  
22 the hearing continued as follows:)

23                  THE COURT: Mr. Sacks.

24                   MR. SACKS: We have worked out two  
25 decisions on the Order which Mr. Toder has which

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1           RANDALL'S ISLAND FAMILY GOLF CENTERS, INC.  
2   will protect Chinatrust's objection pending the  
3   final hearing. Mr. Toder can --

4                   THE COURT: Before I forget, I'm  
5   going to put the final hearing on June 2nd because  
6   this is going to take longer than these final  
7   hearings ordinarily take and we are going to have  
8   a whole day, make it 10 o'clock. I don't have  
9   anything else, it's a Friday.

10                  MR. SACKS: We will change the notice  
11   to -- Mr. Toder can put on the record what the  
12   changes are.

13                  MR. TODER: At the end of paragraph  
14   15, Your Honor, and we will hand it up afterwards  
15   for the Court we would add the following sentence:

16                         "Nothing herein shall prejudice  
17   Chinatrust Bank (USA) and/or Chinatrust Commercial  
18   Bank (New York Branch), (collectively,  
19   Chinatrust), in any way from making a motion for  
20   further or different adequate protection."

21                         Then it will add a new paragraph 29,  
22   will state: "Nothing herein shall preclude  
23   Chinatrust from making any and all objections to  
24   the entry of a final Order with respect to this  
25   Financing, initial cap, including without

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1        RANDALL'S ISLAND FAMILY GOLF CENTERS, INC.  
2        limitation seeking further or different adequate  
3        protection or making any further motion with  
4        respect to the financing."

5                THE COURT:    Okay.    I just had a  
6        couple of things I wanted to note.    On the record.

7                On page 7 it says that the  
8        pre-petition secured lenders are entitled and then  
9        it's got a list of sections to adequate protection  
10       of their interests in the pre-petition collateral,  
11       and it refers to 364(d)(1) and 364(d)(1) does not  
12       relate to the adequate protection of pre-petition  
13       collateral.    It relates to financing.

14               They are entitled to adequate  
15       protection under a 361 and 361(e), and it may be  
16       entitled if it's cash collateral under one of the  
17       363(c) provisions.

18               MR. TODER:    The only reason that was  
19       put in, Your Honor, is because one of the grounds  
20       of the adequate protection being sought is because  
21       of the priming being put in, and so when  
22       priming --

23               THE COURT:    But that's only for the  
24       post-petition lending.    This refers to the --

25               MR. TODER:    No because they are being

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1       RANDALL'S ISLAND FAMILY GOLF CENTERS, INC.  
2       primed by virtue of 364(d) there is an entitlement  
3       to adequate protection under the Code.

4               THE COURT: I see what you are  
5       saying.

6               I understand now, I misspoke.  
7       Further on, paragraph 6 it says: "A third of the  
8       post-petition interim financing are fair and  
9       reasonable."

10              Since the determination of fair and  
11       reasonable is based on the interim Order and the  
12       fact that we are pushing a lot of these so called  
13       objectionable terms to the final hearing I would  
14       say that to determine the post-petition are fair  
15       and reasonable and the same with the other  
16       reference to the post-petition financing in the  
17       next sentence. I'm just determining at this point  
18       that --

19              MR. TODER: No, I understand. I  
20       don't know exactly what it is, do you have it  
21       marked?

22              THE COURT: There was just one other  
23       thing, it had to do with what you were asserting  
24       and what I was finding.

25              The same paragraph, paragraph 4 that

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1       RANDALL'S ISLAND FAMILY GOLF CENTERS, INC.  
2       we started with. You are asserting that the as of  
3       filing date the funds on deposit are subject to  
4       said office. I'm not making any findings.

5               MR. SACKS: That's all that's  
6       intended.

7               MR. TODER: Chase asserts that.

8               MR. FIRST: Again, it may be the  
9       Debtor's error in terms of all their assertions,  
10      we put that without any rights --

11              THE COURT: Just say insertion and  
12      say that the foregoing is without prejudice to  
13      anybody's right to challenge the pre-petition  
14      liens or whatever.

15              MR. SACKS: Your Honor, where did you  
16      want the insertion added?

17              THE COURT: Put it right at the  
18      beginning.

19              MR. TODER: Just --

20              THE COURT: Just track the same type  
21      of language you used.

22              MR. TODER: Did you want another  
23      sentence at the end then? I wasn't clear.

24              THE COURT: The issue was raised that  
25      it should say that without prejudice to the rights

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1        RANDALL'S ISLAND FAMILY GOLF CENTERS, INC.  
2        of anybody else, which I guess is simple. But all  
3        you are saying it's an assertion, if you want to  
4        add it one more time I don't care.

5                    Is there anything else?

6                    MR. SACKS: No, Your Honor.

7                    THE COURT: Why don't you just change  
8        the return date to June 2nd, serve the notices.

9                    MR. SACKS: It should be able to be  
10       out tomorrow, Judge. Do you want us to take the  
11       disk back and make these changes?

12                   THE COURT: You can do that and just  
13       send it over this afternoon to chambers.

14                   MR. TODER: Thank you, Your Honor.

15                   THE COURT: Is there anything else?

16                   (No response.)

17                   THE COURT: Hearing no response we  
18       are adjourned.

19

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C E R T I F I C A T E

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STATE OF NEW YORK        )  
                                  ) ss.:  
COUNTY OF NEW YORK     )

I, L. BOBBIE LEVY, a Shorthand  
Reporter and Notary Public within and for  
the State of New York, do hereby certify:

I reported the proceedings in the  
within-entitled matter, and that the within  
transcript is a true record of such  
proceedings.

I further certify that I am not  
related, by blood or marriage, to any of  
the parties in this matter and that I am  
in no way interested in the outcome of this  
matter.

IN WITNESS WHEREOF, I have hereunto  
set my hand this \_\_\_\_\_day of \_\_\_\_\_,  
2000.

-----  
L. BOBBIE LEVY

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